

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Abraham North,)	
)	
Plaintiff,)	Civil Action No.: 2:18-cv-01037-JMC
)	
v.)	
)	
Ed Carroll, Mr. Razar, Mr. Thomas, Hanna)	ORDER
Bishop, Barnwell Detention Center,)	
)	
Defendants.)	
_____)	

This matter is before the court for review of the Magistrate Judge’s Report and Recommendation (“Report”) filed on June 27, 2018 (ECF No. 16). The court **ACCEPTS** the Magistrate Judge’s Report and incorporates it herein by reference. For the reasons set out in the Report, (1) the court **DISMISSES** Barnwell County Detention Center (“BCDC”) as a party; (2) **DISMISSES** Defendants Carroll, Razar, and Thomas, in their official capacities, as parties; and (3) gives Plaintiff leave to file an amended complaint by November 28, 2018.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Report sets forth the relevant facts and legal standards, which this court incorporates herein without a full recitation. (ECF No. 16 at 1–4.) As brief background, on April 17, 2018, Plaintiff Abraham North (“Plaintiff”), proceeding pro se and in forma pauperis, filed this § 1983 action alleging he had received inadequate medical care in violation of his First, Fourth, Fifth, and Eighth Amendment rights.¹ (ECF No. 1 at 3, 5–6, 8.) Specifically, Plaintiff alleges that a dentist recommended to the BCDC medical staff that Plaintiff have four infected teeth removed, but BCDC medical personnel only removed two of Plaintiff’s infected teeth. (*Id.* at 5–6, 8.) Plaintiff

¹ Plaintiff sues Defendants in both their official and individual capacities. (ECF No. 1 at 2–3.)

alleges that Defendants' refusal to remove all four of Plaintiff's infected teeth constitutes deliberate indifference to serious medical needs. (*Id.* at 4, 5.)

On June 27, 2018, the Magistrate Judge entered her Report. (ECF No. 16.) The Magistrate Judge, liberally construing Plaintiff's Complaint, found Defendant BCDC "is entitled to summary dismissal because courts have routinely held that buildings, facilities, and grounds do not act under color of state law and are not 'persons' subject to suit under § 1983." (*Id.* at 4.) As to Plaintiff's allegations of deliberate indifference involving the other Defendants, the Magistrate Judge found Plaintiff's allegations state a claim of deliberate indifference to serious medical needs under the Eighth Amendment. (*Id.* at 5–6.) However, the Magistrate Judge also found Plaintiff "does not allege any specific personal actions by each Defendant regarding this claim," as required for a § 1983 action. (*Id.* at 7–9.) Finally, the Magistrate Judge found Defendant Carroll, who is the Sheriff of Barnwell County (*id.* at 2), Captain Razar, and Lieutenant Thomas are immune from suit in their official capacities under the Eleventh Amendment. (*Id.* at 10–11.) As to Defendant Bishop, the Magistrate Judge stated that because "Plaintiff's Complaint alleges no facts regarding any actions by [Defendant Bishop] . . . it is not possible at this time to determine if she is a state actor protected by sovereign immunity in her official capacity." (*Id.* at 11.) Based on the foregoing, the Magistrate Judge recommends (1) dismissing the BCDC as a party; (2) dismissing Defendants Carroll, Razar, and Thomas, in their official capacities, as parties; and (3) giving Plaintiff leave to file an amended complaint. (*Id.*)

The Magistrate Judge's Report informed the parties of their right to file objections to the Report within fourteen (14) days of the date of service of the Report. (*Id.* at 12.) The Report was mailed to Plaintiff on June 27, 2018. (ECF No. 17.)

II. STANDARD OF REVIEW

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District Court of South Carolina. The Magistrate Judge only makes a recommendation to this court; the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This court is charged with engaging in a *de novo* review of those portions of the Report and Recommendation to which the parties have made specific objections; the court may accept, reject or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

III. DISCUSSION

On June 27, 2018, as part of the Report, the Magistrate Judge notified the parties of their right to file objections by July 11, 2018. (ECF No. 16 at 12.) None of the parties filed objections to the Report by this date. In the absence of objections to the Magistrate Judge's Report, this court is not required to provide an explanation for adopting the recommendation without modification. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Absent objections, the court must only ensure that there is no clear error on the face of the record in order to accept the recommendation. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). If a party fails to file a specific, written objection to the Report, the party forfeits the right to appeal the District Court's decision concerning the Report. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984). Accordingly, since none of the parties filed any objections to the Report, and the court observes no clear error on the face of the record, the court accepts the Magistrate Judge's Report. *See Diamond*, 416 F.3d at 315; *Camby*, 718 F.2d at 199.

IV. CONCLUSION

After a thorough and careful review of the record, the court finds the Magistrate Judge's Report and Recommendation provides an accurate summary of the facts and law in this case. The court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 16) and incorporates it herein by reference. For the reasons set out in the Report, (1) the court **DISMISSES** Barnwell County Detention Center as a party; (2) **DISMISSES** Defendants Carroll, Razar, and Thomas, in their official capacities, as parties; and (3) gives Plaintiff leave to file an amended complaint by November 30, 2018.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

November 09, 2018
Columbia, South Carolina